



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

January 16, 2003

Ms. Ellen B. Hutchital  
McGinnis, Lockridge & Kilgore  
1221 McKinney Street, Suite 3200  
Houston, Texas 77010

OR2003-0349

Dear Ms. Hutchital:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 175090.

The Spring Branch Independent School District (the "district"), which you represent, received a request for information related to the district's investigation of the requestor. Although you have released some responsive information, you claim that the remaining information is excepted from disclosure under sections 552.101, 552.108, and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

We first note that the submitted information includes information that is subject to section 552.022 of the Government Code. Section 552.022(a) enumerates categories of information that are public information and not excepted from required disclosure under chapter 552 of the Government Code unless they are expressly confidential under other law. The information that you submitted to us for review consists of a completed report or investigation that falls into one of the categories of information made expressly public by section 552.022. See Gov't Code section 552.022(a)(1). Section 552.022(a)(1) states that

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

a completed report, audit, evaluation, or investigation made of, for, or by a governmental body is expressly public unless it is excepted under section 552.108 of the Government Code or is expressly confidential under other law. You contend that sections 552.135, 552.108, and 552.101 in conjunction with the informer's privilege make this information confidential.

The common law informer's privilege, incorporated into the Public Information Act (the "Act") by section 552.101 of the Government Code, has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *see also Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928); *Roviaro v. United States*, 353 U.S. 53, 59 (1957). The informer's privilege under *Roviaro* exists to protect a governmental body's interest. Thus, it may be waived by a governmental body and is not 'other law' that makes information confidential under section 552.022. *See Open Records Decision No. 549 at 6* (1990). But in *In re The City of Georgetown*, 53 S.W.3d 328 at 337 (Tex. 2001), the Texas Supreme Court held that "[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are 'other law' within the meaning of section 552.022." Rule 508 of the Texas Rules of Evidence provides, in relevant part:

(a) Rule of Privilege. The United States or a state or subdivision thereof has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation.

(b) Who May Claim. The privilege may be claimed by an appropriate representative of the public entity to which the information was furnished, except the privilege shall not be allowed in criminal cases if the state objects.

Thus, an informer's identity is confidential under Rule 508 if a governmental body demonstrates that an individual has furnished information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation, and the information does not fall within the purview of the exceptions to the privilege enumerated in Rule 508(c). Here, the individual did not furnish information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff. Therefore, the information may not be withheld under Rule 508 of the Texas Rules of Evidence.

Section 552.108 provides, in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication.

You contend that the submitted information is excepted from disclosure under section 552.108(a)(2) because "the investigation did not result in a conviction or deferred adjudication." However, the submitted documents state that the investigation conducted by the Professional Standards Unit of the district's police department was to determine "possible [district] policy and procedure violations at the Maintenance Department." Section 552.108 is inapplicable to a police department's administrative investigations that do not involve an investigation of crime. *See Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied). Because the submitted information does not relate to a criminal investigation, we find that the submitted information is not excepted from disclosure under section 552.108.

Next, we note that the submitted documents contain information to which section 552.117 is applicable. Section 552.117 excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See Open Records Decision No. 530 at 5 (1989)*. Therefore, the district may only withhold information under section 552.117 on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the district received the present request for information. If the employee timely elected to keep his personal information confidential, the district must withhold the personal information. The district may not withhold this information under section 552.117 if the employee did not make a timely election to keep such information confidential. We also note however that section 552.117 is intended to protect a person's privacy interest, and the requestor is a person whose privacy interest the district seeks to protect. Under section 552.023 of the Government Code a person who is the subject of the information or the person's authorized representative has a special right of access to such information. Therefore, the district may not withhold from George Greer the section 552.117 information relating to Mr. Greer and must release to Mr. Greer his own personal information. The district must withhold the social security numbers of the employees who made timely elections under section 552.024.

Section 552.135 of the Government Code provides as follows:

(a) "Informer" means a student or former student or an employee or former employee of a school district who has furnished a report of another person's

or persons' possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

(c) Subsection (b) does not apply:

(1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student's or former student's name; or

(2) if the informer is an employee or former employee who consents to disclosure of the employee's or former employee's name; or

(3) if the informer planned, initiated, or participated in the possible violation.

(d) Information excepted under Subsection (b) may be made available to a law enforcement agency or prosecutor for official purposes of the agency or prosecutor upon proper request made in compliance with applicable law and procedure.

(e) This section does not infringe on or impair the confidentiality of information considered to be confidential by law, whether it be constitutional, statutory, or by judicial decision, including information excepted from the requirements of Section 552.021.

Gov't Code § 552.135. Because the legislature specifically limited the protection of section 552.135 to the identity of a person who reports a possible violation of "law," a school district that seeks to withhold information under section 552.135 must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See also* Gov't Code § 552.301(e)(1)(A).

Although you indicate that the informants furnished information of another person's possible violation of a criminal law (theft) to the school district police department, a review of the information reveals that the information was furnished to the school district itself. We have reviewed the submitted information and conclude that only two informants were involved. One of the informants is not named. We have marked the information pertaining to the other informant that must be withheld under section 552.135.

In summary, the district must withhold the marked information under section 552.135. Also the district must withhold the social security numbers of the employees who made timely elections under section 552.024. However, the district must release the requestor's social security number to him.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Heather Ross".

Heather Pendleton Ross  
Assistant Attorney General  
Open Records Division

HPR/sdk

Ref: ID# 175090

Enc: Submitted documents

c: Mr. George Greer  
2303 Rosefield Drive  
Houston, Texas 77080  
(w/o enclosures)